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FILED IN UNITED STATES DISTRICT  
COURT, DISTRICT OF UTAH  
OCT 16 2012  
BY D. MARK JONES, CLERK  
DEPUTY CLERK

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IN THE UNITED STATES DISTRICT COURT FOR  
THE DISTRICT OF UTAH CENTRAL DIVISION

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Honorable Clair M. Poulson,  
Judge of the Duchesne County  
Justice Court, and Derek  
Dalton,

Civil No. 212-CV-00497

Plaintiff(s),

DEFENDANT INDIAN'S MEMORANDUM  
IN OPPOSITION TO DEFENDANT UTE  
TRIBE'S MOTION TO DISMISS

v.

Edson Gardner, and Lynda Kozlowicz,  
and Athenya Swain, and Johnny Slim Sr.,

Defendant(s),

Judge, Bruce S. Jenkins

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IN THE UNITED STATES DISTRICT COURT FOR  
THE DISTRICT OF UTAH CENTRAL DIVISION

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Honorable Clair M. Poulson,  
Judge of the Duchesne County Justice Court, and Derek Dalton,  
Plaintiff(s),  
v.

Civil No. 212-CV-00497  
DEFENDANT INDIAN'S MEMORANDUM  
IN OPPOSITION TO DEFENDANT UTE  
TRIBE'S MOTION TO DISMISS

Edson Gardner, and Lynda Kozlowicz,  
and Athenya Swain, and Johnny Slim Sr.,

Defendant(s), Judge, Bruce S. Jenkins

---

Defendants, Edson Gardner, and Lynda Kozlowicz, and Athenya Swain, and Johnny Slim Sr., Memorandum In Opposition To Defendant Ute Tribe's Motion To Dismiss, pursuant to Civil action for deprivation of rights, 42 U.S.C. 1983, and Civil rights and elective franchise, 28 U.S.C. 1343, and Act of Congress protection of civil rights, Indian Civil Rights Act, 25 U.S. 1301-1303, and Defendants herein do not represent Ute Tribe, and Business Committee Members in any capacity, and disclaim any and all arguments asserted to United States

District Court herein by party alleged to be brought forth herein, on following.

**A. STATEMENT OF FACTS**

1. Defendants' State charges, were filed against Defendant Indians in Duchesne County Justice Court, filed by Duchesne County Sheriff, where Defendants herein filed to transfer to Ute Tribal Court before bringing actions in Tribal Court. Defendant Indians' filed Indian Country, 18 U.S.C. 1151, and were denied to transfer to Ute Tribal Court by Duchesne County Justice Court, Judge Poulson. Plaintiffs having filed in Federal Court for civil rights violation to enjoin Duchesne County Justice Court's right to prosecute for violation for Utah State laws by their local officers and refusing to have Bureau of Indian affairs Police present when making a traffic stop.

2. Defendants motion for United States District Court to review and enforce Ute Tribal Court's jurisdiction and authority over Indian Defendants. Defendants motions in Opposition, that Ute Tribal Court's subject matter jurisdiction is being side stepped by State and County for claims brought by Indian Defendants based on federal rulings, against Utah State prosecuting charges or for State claims.

3. The federal Courts determined Indian is under

federal and tribal jurisdiction. Indian Defendants are subject to tribal and federal jurisdiction. The Ute Tribal Court pursuant to Indian Civil Rights Act, 25 U.S.C. 1301-3, and Civil rights and elective franchise, 28 usc 1343(4), now Defendant Indians are asking for federal court order so as to entitle Indian Defendants to full protection of Act of Congress within Ute Tribal Court.

4. Defendant as Indians was charged within boundaries of Uintah and Ouray Reservation. The Defendant Indians by concluding matter of law alleged charges occurred in Indian Country. 18 U.S.C. 1151. The District Court has made ruling of Indian country on record. Therefore we need not to address additional contention of Defendants by District Court as imposed.

#### B. STANDARD OF REVIEW

##### 1. DEFENDANT INDIANS TO REAFFIRM FEDERAL STIPULATION AND FEDERAL COURT ORDERS

5. On September 2, 1992, (nunc pro tunc, August 3, 1992) this Court entered an Order incorporating Stipulation had been entered by litigation. In pertinent part, the Federal Court Order acknowledges State, on behalf of political subdivision, had agreed:

to refrain from .... exercising civil or criminal jurisdiction in a manner that conflicts with federal law within the exterior boundaries of the Uintah and

Ouray Reservation, as those boundaries were set forth by the Tenth Circuit Court of Appeals in Ute Indian Tribe v. Utah, 773 F. 2d 1087 (10th Cir. 1985) (en banc). cert. denied, 479 U.S. 994 (1986); or from interfering, in any way, with the Tribe's exercise of criminal, civil and regulatory jurisdiction .... within the exterior boundaries of the Uintah and Ouray Reservation, as those boundaries were set forth by the Tenth Circuit Court of Appeal in Ute Indian Tribe, supra.

Following issuance of decision by tenth circuit court of appeals, in Ute Indian Tribe of the Uintah and Ouray Indian Reservation v. State of Utah, 114 F. 3d 1513 (10th Cir. 1997), and we request for a Federal Court Order.

2. THE CIVIL ACTION FOR DEPRIVATION OF RIGHTS AND THE INDIAN CIVIL RIGHTS ACT

6. Defendant Indians claims pursuant to Civil action for deprivation of rights, 42 U.S.C. 1983. The burden shifts to Plaintiff State of Utah to show how defendant Indians violated their constitutional rights and constitutional rights was clearly established. Morris v. Noe, 572 F. 3d 1185, 1191 (10th Cir. 2012). As this is an element of offense. The Utah State government has burden to prove how crime was committed in Indian Country. United State v. Jewett, 438 F. 2d 495, 497 (8th Cir. 1971). Indian Country includes all land within limits of any Indian reservation under jurisdiction of United States Government, notwithstanding issuance of any patent, and, including right-of-way running through reservation pursuant to Indian Country, 18 U.S.C. 1151(a). In Trial of



right of property; burden of proof, 25 U.S.C. 194, which provides that in trials involving title to property where an Indian is on one side and a White Person on the other, the burden of proof shall rest upon the White Person, whenever the Indian shall make out a previous possession or ownership. That statute was applied by Supreme Court, in Wilson v. Omaha Indian Tribe, 442 U.S. 653 (1979).

3. PLAINTIFF DUCHESNE COUNTY JUSTICE COURT OFFICER'S  
ACKNOWLEDGE DEFENDANT INDIAN'S U.S. CIVIL RIGHTS

7. Defendant Indians have been resident of Uintah and Ouray Indian Reservation, at all times relevant hereto, and continuing through at time of action complained of herein. Plaintiff Duchesne County Justice Court Judge and Sheriff, at all times alleged herein, Plaintiffs acted under color of Utah State law in scope of duties as Duchesne County Justice Court Judge and Sheriff. At those times, Plaintiffs were decision-makers and policy-makers for Duchesne County Justice Court Judge and Sheriff Department and for Duchesne County in regard to law enforcement matters. For purpose of Civil action for deprivation of rights, 42 U.S.C. 1983, Plaintiffs were acting under color of Utah State law, in connection with Defendant Indians 1983 claims, and Plaintiff's action personally and in official capacity as Duchesne County Justice Court Judge and

Sheriff. Plaintiffs were responsible for screening, hiring, training, monitoring, supervising and disciplining the subordinate employees of law enforcement, and enforcing Utah State law in Duchesne County.

4. DEFENDANT UTE TRIBAL BUSINESS COMMITTEE OFFICERS  
ACKNOWLEDGE DEFENDANT INDIAN'S INDIAN CIVIL RIGHTS

8. Defendant Ute Tribal Business Committee Members has responsibility over tribal law enforcement in Uintah and Ouray Indian Reservation, at all times relevant hereto were employed as Ute Tribal Business Committee Members, in Ute Tribe. At time of action complained of herein, Defendant Ute Tribal Business Committee Members, at all times alleged herein acting under color of law and within scope of their duties as Ute Tribal Business Committee Members as Federal corporation, for purpose of Indian Civil Rights Act, 25 U.S.C. 1301-03, and acting under color of tribal law. In connection with Defendant Indian's 1983 claims, Defendant Ute Tribal Business Committee Members' action personally and in official capacity as Ute Tribal Business Committee Members have suspended Defendants Gardner and Kozlowicz without a hearing of any violation of tribal laws or due process committed by them.

C. ARGUMENT

5. THE UNITED STATES DISTRICT COURT HAS JURISDICTION  
OVER CIVIL RIGHTS AND ELECTIVE FRANCHISE PURSUANT  
TO RELIEF UNDER ANY ACT OF CONGRESS PURSUANT TO

INDIAN CIVIL RIGHTS ACT

9. Applied Jones v. Mayer, 392 U.S. 409 (1968), reasoning in Indian action, Johnson v. Lower Elwha Tribal Community, 484 F. 2d 200 (9th Cir. 1973), brought action under Indian Civil Rights Act and 28 U.S.C. 1343 to enforce due process of ICRA. The Court found jurisdiction and waiver of sovereign immunity through combination of 1343 and ICRA.

Appellee contends that the Act by itself is not jurisdictional. However, the pre-existing grant of jurisdiction under 28 U.S.C. 1343(4) serves as a basis upon which to enforce alleged violation of provisions of the Indian Civil Rights Act which would, if appellee's argument were accepted, be unenforceable and thus almost meaningless

The Court also analogized between this case and Jones v. Mayer, in determining whether there was cause of action under statutes in question. The Supreme Court in situations similar to this has implied an appropriate remedy (usually private cause of action) to carry out Congressional purposes.

10. In Crowe v. Eastern Band of Cherokee Indians, 506 F. 2d 1231 (4th Cir. 1974), tribal member brought an action against tribe for violations of equal protection and due process clause of ICRA, via 1343. Again, the Court upheld use of 1343 jurisdiction, saying we agree with this jurisdictional conclusion of Court below since section 1343(4) provides logical and specific basis of jurisdiction and to hold

otherwise would render provision of Act unenforceable and an exercise in Congressional futility. Id. at 1234.

11. In Dry Creek Lodge, Inc. v. United States, 515 F. 2d 926 (10th Cir. 1975), dealt with jurisdiction over individual tribal officers and against redress through ICRA and 1343. The Court found that jurisdiction under 1343 does not typically extend to individual tribal members. Of course, to extent individuals are acting as agents for tribes or Council. The Court does possess jurisdiction to extend injunctive relief to individual agents. Though waiver of sovereign immunity under ICRA for certain actions has been precluded through Santa Clara Pueblo v. Martinez, 436 U.S. 49 (1978), jurisdiction under combination of 1343 and other statutes relating to Indian rights has not been struck down.

12. There have also been other abrogations of tribal sovereign immunity absent specific enforcement provision in federal statutes. For example, Osage Tribal Council v. U.S. Dept. of Labor, 187 F. 3d 1174 (10th Cir. 1999), held Safe Drinking Water Act abrogated sovereign immunity, despite absence of any clause specifically stating tribal sovereign immunity was waived. The Court reasoned statutes provides cause of action against person violating act, that person is defined to include municipalities, and municipalities is

defined to include Indian Tribes.


**CONCLUSION**

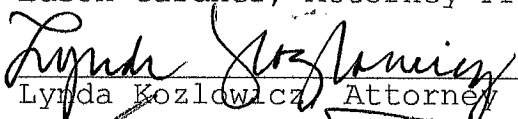
WHEREFORE, Defendant Indians pray for Judgment against Plaintiff Duchesne County Justice Court and Derek Dalton as follows, and for declaration under Declaratory Judgments - Creation of remedy, 28 U.S.C. 2201 and 2202 the Ute Tribal and Federal Court has subject matter jurisdiction over claims being made against Plaintiffs doing so under unlawful authority, or to bring this suit against Defendant Indians, and enjoin Plaintiff Duchesne County Justice Court for U.S. Constitutional violation. Defendant Indians' cases have been prejudiced for any request to transfer to Ute Tribal Court to prosecute the charges alleged by Plaintiffs, Duchesne County Justice Court and ask for Federal District to dismiss Defendant's cases in Duchesne Justice Court with prejudice. The District Court to determine Plaintiff Duchesne County Justice Court does not have subject matter jurisdiction over tribal and federal claims against Defendant Indians, by Plaintiffs Duchesne County Justice Court; And Defendant Indians request declaration under Declaratory Judgment - Creation of remedy, 28 U.S.C. 2201, and 2202 Plaintiff Duchesne County Justice Court as Federal Statute as Civil rights and elective franchise, 28 U.S.C. 1343(4), that stated;

to recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote;

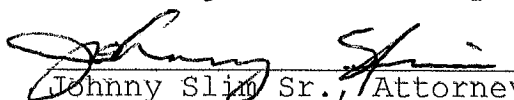
as to entitle Defendants protections of Indian Civil Rights Act, 25 U.S.C. 1301-03, the U.S. Statute in proceedings before Plaintiffs Duchesne County Justice Court and for Order enjoining Defendants Ute Tribal Business Committee and Ute Tribal Court from denying Defendant Indians rights under Indian Civil Rights Act, and such other and further relief as District deems just and equitable under circumstance.

Respectfully submitted this day 15 of Oct. 2012.

  
Edson Gardner, Attorney Pro-Se.

  
Lynda Kozlowicz, Attorney Pro-Se.

  
Atheyna Swain, Attorney Pro-Se.

  
Johnny Slim Sr., Attorney Pro-Se.

3 - OCTOBER 11, 2012

## POULSON V UTE INDIAN TRIBE, ET AL

*Poulson v Ute Indian Tribe,  
et al*

Poulson et al. v. Ute Indian  
Tribe et al., Case No. 2:12-  
cv-00497, United States Dis-  
trict Court, District of Utah.

This case was filed by  
State District Court Judge  
Clair M. Poulson and (former)  
Duchesne County Sheriff's  
Deputy Derek Dalton against  
the Ute Indian Tribe, Business  
Committee, Tribal Court, Business  
Committee members in their  
official capacities, Chief Judge  
Smiley Arrowchis in his individual  
official capacity, Athenya  
Swain, Dean Reed, Lynda  
Kozlowicz, Edson Gardner,  
Kozlowicz and Gardner  
Advocate, Inc., and Johnny  
Slim, Jr. The Plaintiffs are  
seeking to determine the extent  
of the Ute tribal court's  
jurisdictional power. The suit  
was filed on or about May  
21, 2012.

This federal complaint  
brings to the forefront the  
jurisdictional issues created  
when lay advocates file suit  
against county officials in  
tribal court. The Poulson  
case involves a number  
of frivolous and baseless  
lawsuits commenced by  
lay advocates, Kozlowicz

& Gardner Advocates, Inc.,  
have been filed in Ute Tribal  
Court. The cases filed by  
Kozlowicz & Gardner Advocates,  
Inc. on behalf of tribal  
members in Ute Tribal Court  
may overstep the bounds of  
the Tribal Court's authority—  
not through the actions of the  
Tribe or its judges but through  
the repeated actions of Kozlowicz  
& Gardner Advocates, Inc. These  
issues must be decided by a  
law-trained judge to ensure that  
the jurisdiction of the Tribal  
Court is protected from challenges  
such as those raised in the  
Poulson case. Outside of the  
Reservation, after years and  
years of similar type lawsuits,  
the outside perception is that  
the Tribe is represented by  
Kozlowicz & Gardner Advocates,  
Inc. and supports their efforts.  
Kozlowicz & Gardner Advocates,  
Inc. do not reference themselves  
by their incorporated name, but  
rather as "Ute tribal advocates"  
which creates confusion as to  
whom they really represent. While  
the Tribe cannot control the  
actions of Kozlowicz & Gardner  
Advocates, Inc. in federal or  
state court, the Tribe's Executive  
Director of the Tribe, as the  
supervisor of lay advocates, can control

their actions as advocates in  
tribal court. To address this  
problem, the Business Committee  
amended the Tribe's law and  
order code to include penalties  
against any advocate who files  
baseless lawsuits. The Tribe's  
Executive Director also has  
taken action to curtail the  
practices of the lay advocates  
Kozlowicz & Gardner Advocates  
by suspending their ability to  
practice law for 90 days, until  
October 9, 2012.

Neither the Ute Indian  
Tribe, Business Committee,  
Tribal Court, Business Committee  
members or Chief Judge  
Smiley Arrowchis have been  
properly served with legal  
process at this time. The  
Tribe has filed a motion to  
dismiss the lawsuit on various  
grounds, including lack of  
Article III jurisdiction under  
the U.S. Constitution, lack of  
federal question or diversity  
jurisdiction, and lack of  
personal jurisdiction over the  
Tribe and its elected Business  
Committee members and other  
tribal officers.

A Status Report and  
Scheduling Conference has  
been scheduled for Wednesday,  
October 10 at 1:30pm.



**STIPULATION**

This stipulation is made this 31<sup>st</sup> day of August, 1992, by and between the State of Utah [hereafter, "the State"], the County of Duchesne, the County of Uinta, the City of Roosevelt, the City of Duchesne [hereafter collectively referred to as "the local defendants"] and the Ute Indian Tribe of the Uintah and Ouray Reservation, Utah [hereafter, "the Tribe"], through the parties' legal counsel.

The Utah Supreme Court's decision in State v. Perank, No. 860243 (July 17, 1992) conflicts with the decision of the Tenth Circuit Court of Appeals in Ute Indian Tribe v. Utah, 773 F.2d (10th Cir. 1985) (en banc), cert. denied, U.S. (1986) insofar as each decision purports to set forth the boundaries of the Uintah Valley Reservation (now a part of the Uintah and Ouray Reservation). In order to avoid potential chaos and avoid jurisdictional uncertainty in the Uintah Basin, the State, local defendants and Tribe enter into the following stipulation.

1. The State, local defendants, their officers, agents, employees and any person acting in their behalf shall refrain from enforcing the Utah Supreme Court's decision in State v. Perank, No. 8602433 (Utah July 17, 1992), and shall refrain from exercising criminal jurisdiction over Indians who are members of the Ute Indian Tribe or any other federally recognized Indian Tribe or civil jurisdiction over actions involving the Ute Indian Tribe or members of the Ute Indian Tribe, or interfering, in any way, with the Tribe's exercise of such civil or criminal jurisdiction within the exterior boundaries of the Uintah and Ouray Reservation, Utah,



Stipulation Ute Indian Tribe v. Utah  
August 18, 1992  
page 2

as those boundaries were set forth by the Tenth Circuit Court of Appeals in Ute Indian Tribe v. Utah, 773 F.2d 10, (10th Cir. 1985) (en banc), cert. denied, U.S. (1986).

2. The Tribe shall exercise criminal jurisdiction over Indians who are members of the Ute Indian Tribe or any other federally recognized Indian Tribe and shall exercise civil and regulatory jurisdiction over Indians and non-Indians to the extent permitted by law within the exterior boundaries of the Uintah and Ouray Reservation, Utah, as those boundaries were set forth by the Tenth Circuit Court of Appeals in Ute Indian Tribe v. Utah, 773 F.2d 10 (10th Cir. 1985) (en banc), cert. denied, U.S. (1986).

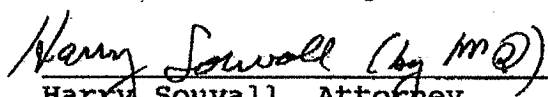
3. This stipulation shall expire on the date immediately following the date on which the Federal District Court for the District of Utah issues its decision on the Tribe's Renewed Motion for Injunctive Relief in Civil No. C-75-408 unless further extended in writing by the parties or by order of the Federal District Court for the District of Utah.


Stipulation Ute Indian Tribe v. Utah  
August 18, 1992  
page 3

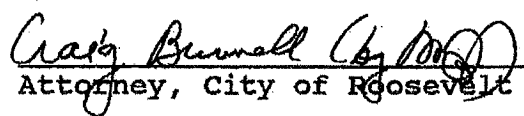
4. Nothing contained herein shall prejudice or be deemed a waiver of the claims or defenses of any party to this stipulation.

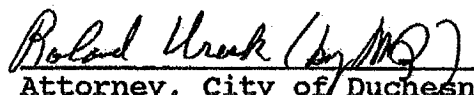
  
Paul Van Dam, Attorney General  
State of Utah

  
Robert S. Thompson, III, General  
Counsel, Ute Indian Tribe

  
Harry Souvall, Attorney  
Uinta County, Utah

  
Herbert Gillespie, Attorney  
Duchesne County, Utah

  
Craig Burnell, Attorney,  
City of Roosevelt

  
Roland Urak, Attorney,  
City of Duchesne

SEP - 1 1992

THE UNITED STATES DISTRICT COURT  
DANCE S. JENKINS

DISTRICT OF UTAH, CENTRAL DIVISION

UTE INDIAN TRIBE of the Uintah and  
Ouray Reservation, Utah,  
Plaintiff,  
vs.  
STATE OF UTAH,  
Defendant in Intervention,  
and  
DUCHESNE COUNTY, a political subdivision  
of the State of Utah; UINTAH COUNTY,  
a political subdivision of the State of  
Utah; ROOSEVELT CITY, a municipal  
corporation; and DUCHESNE CITY, a  
municipal corporation,  
Defendants.  
UNITED STATES OF AMERICA and PARADOX  
PRODUCTION CORPORATION, a Utah  
corporation,  
Amicus Curiae.

Civil No. C 75-408J

ORDER

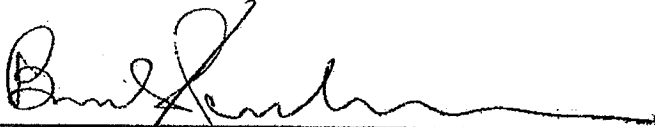
No. 860243 (Utah 1992)

FILED  
UNITED STATES  
DISTRICT COURT  
DISTRICT OF UTAH  
SEP 2 1 56 PM '92  
BY  
MARKUS ZIMMER  
CLERK  
DEPUTY CLERK

This matter came before the Court on the Motion of the Ute Indian Tribe for a Temporary Restraining Order or Preliminary Injunction. All parties to the proceeding received copies of the Tribe's pleadings in advance of a hearing held on Monday, August 3, 1992 at 3:30 p.m. and were represented by legal counsel at the hearing.

At the Court's request, attorneys for the Tribe had spoken with the State Attorney General's office prior to the hearing for the purpose of determining whether the parties could reach an agreement on the issue presented to this Court by the Tribe's motion for a preliminary injunction. A stipulation was reached, whereby the State agreed, on behalf of itself and its political subdivisions, to refrain from enforcing the Utah Supreme Court's

Dated this <sup>Sept</sup> 2 day of ~~August~~, 1992, nunc pro tunc August 3,  
1992.

  
\_\_\_\_\_  
Bruce S. Jenkins, Chief Judge  
United States District Court  
District of Utah

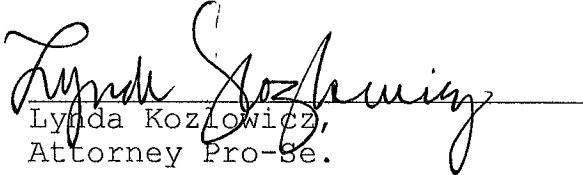
CERTIFICATION OF SERVICE

This is to certify true and correct copy of **DEFENDANT INDIAN'S MEMORANDUM IN OPPOSITION TO DEFENDANT UTE TRIBE'S MOTION TO DISMISS**, foregoing document was delivered by mail first class, postage prepaid and addressed as follows on this 15, day of Oct. 2012.

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Carl F. Huefner  
Noah M. Hoagland  
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Lynda Kozlowicz, Attorney Pro-Se.  
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Fort Duchesne, Utah 84026  
Telephone; (423) 722-8224 or 722-6707

Oct. 15, 2012.

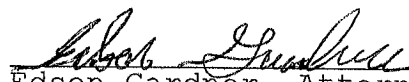
U.S. District Court  
Office of the Clerk  
350 South Main Street, Suite 150  
Salt Lake City, Utah 84101-2180

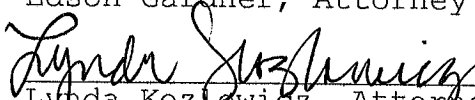
Re; Poulson v. Ute Indian Tribe, Case No. 2;12-CV-00497

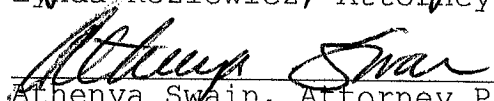
The following attached herein is submitted for filing and review with U.S. District Court. Please stamp and file.


- I. DEFENDANT INDIAN'S MOTION IN OPPOSITION TO  
DEFENDANT UTE TRIBE'S MOTION TO DISMISS
- II. DEFENDANT INDIAN'S MEMORANDUM IN OPPOSITION  
TO DEFENDANT UTE TRIBE'S MOTION TO DISMISS

Respectfully submitted.

  
Edson Gardner, Attorney Pro-Se.

  
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